

AMENDED IN ASSEMBLY JUNE 26, 2006

SENATE BILL

No. 1137

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senator
Ducheny**

January 10, 2006

An act ~~relating to the Budget Act of 2006~~ to amend Sections 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, ~~Committee on Budget and Fiscal Review~~ Ducheny. ~~Budget Act of 2006. Drug treatment.~~

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a $\frac{2}{3}$ vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines "drug treatment program" for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

The act creates a Substance Abuse Treatment Trust Fund to provide moneys to cover county costs associated with drug treatment programs, as specified. The act also requires annual and long-term effectiveness and financial impact studies on the programs funded by the act as well as periodic audits of the expenditures.

This bill would specify, in addition, that the moneys provided by the act cannot be used to fund in any way drug treatment courts or supervision associated with the drug treatment courts. This bill would

also provide for 3-, 2-year follow-up effectiveness and fiscal impact studies, instead of the annual studies and require the department to submit annual reports on the people served as a result of this act. This bill would permit the department to require a county to undertake a corrective action if a periodic audit determines the county has spent money provided by the act not in accordance with the act.

The act defines “successful completion of treatment” as a defendant who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define “successful completion of treatment” as a defendant who has completed the prescribed course of treatment. Completion of treatment would not mean cessation of narcotic replacement therapy.

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

This bill would require drug testing as a condition of probation. The bill would require a person subject to the act to be monitored by the court, as specified.

The act does not apply to a defendant who has been convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would, with respect to the above description of a defendant to whom the act does not apply, add the condition that in order to exclude a defendant the court must find that the defendant poses a danger to the safety of others and would not benefit from a drug treatment program, and would similarly prohibit a person who has previously served 3 separate prison terms for non-drug-related felonies benefiting from the provisions of the bill, if the court makes that finding. The bill would provide that the court shall state its findings, and the reasons for those findings, on the record.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

This bill would authorize the court, after a hearing to determine whether the defendant has successfully completed treatment and probation, including refraining from the use of drugs after completion of treatment, to set the conviction aside, as specified.

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in some circumstances, to order the defendant to complete a residential drug treatment program, if available, or be placed in a county jail for not more than 10 days for detoxification purposes only. This bill would however, provide that no incarceration costs will be reimbursed from the fund.

Existing law requires an annual study to evaluate the effectiveness of the act.

This bill would change the items to be included in that study.

Existing law, with some exceptions, prohibits the suspension or revocation of parole for commission of a nonviolent drug possession offense or violating any drug-related condition of parole. Further, existing law prescribes the steps the Parole Authority is to take upon this type of violation, and the actions that any drug treatment provider must thereafter take, as specified. Drug treatment services are not to be required as a condition of parole for longer than 12 months.

This bill would authorize the Department of Corrections and Rehabilitation, Division of Adult Parole Operations to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment may be extended to 24 months. The bill would make clarifying changes to related provisions.

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Further, this bill would declare that the provisions of the act are severable and any provision found to be invalid shall be submitted to the voters at the next statewide election.

~~*This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2006.*~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~
yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares the*
2 *following:*

3 *(a) On November 7, 2000, the People of the State of California*
4 *enacted the Substance Abuse and Crime Prevention Act of 2000*
5 *(hereinafter the act), codified in Sections 11999.5, 11999.6,*
6 *11999.9, 11999.10, and 11999.12 of the Health and Safety Code,*
7 *and Sections 1210, 1210.1, and 3063.1 of the Penal Code to*
8 *provide community-based substance abuse treatment programs*
9 *for nonviolent defendants, probationers and parolees charged*
10 *with simple drug possession or drug use offenses.*

11 *(b) The act provided an appropriation from the General Fund*
12 *to the Substance Abuse Treatment Trust Fund in the amount of*
13 *one hundred and twenty million dollars (\$120,000,000) annually*
14 *through the 2005–06 fiscal year with any additional*
15 *appropriation dependent on review and action by the*
16 *Legislature.*

17 *(c) Each year following the implementation of the act the*
18 *Department of Alcohol and Drug Programs (hereinafter the*
19 *department) was required and did in fact conduct a study to*

1 *evaluate the effectiveness and financial impact of the programs*
2 *which were funded pursuant to the act. The studies have focused*
3 *on the implementation process, participant demographics and*
4 *treatment completion rates as well as other impacts and issues*
5 *the department identified. Reports were submitted to the*
6 *Legislature by the department.*

7 *(d) In addition, the department contracted, as required by the*
8 *act, with a public university, the University of California at Los*
9 *Angeles (hereinafter UCLA) to evaluate the effectiveness and*
10 *financial impact of the programs which were funded pursuant to*
11 *the requirements of this act and to report findings that were in*
12 *fact forwarded to the Legislature by the department.*

13 *(e) The UCLA evaluations have found that approximately 30*
14 *percent of referred SACPA offenders do not enter treatment.*
15 *Judicial monitoring, through dedicated court calendars,*
16 *collaboration and coordination between the courts, probation*
17 *and treatment, as demonstrated by drug courts, would enhance*
18 *entry, retention, and completion of treatment by offenders.*

19 *(f) The UCLA evaluations have found that 34 percent of those*
20 *who do in fact enter treatment complete that treatment. This*
21 *completion rate, as well as retention rates, can be improved*
22 *through the enhancement of compliance with treatment, as well*
23 *as tailoring treatment to the needs of offenders following*
24 *drug-related violations of probation to assure that the level and*
25 *duration of treatment they are assessed or reassessed to*
26 *overcome addiction, including detoxification and residential*
27 *services, are provided, and that treatment be of sufficient*
28 *duration to meet individual needs of defendants.*

29 *(g) SACPA does not specifically address the use of short*
30 *periods of jail time as a motivational tool to hold SACPA*
31 *offenders accountable to enter and stay in treatment. Studies*
32 *have reported that drug court clients were more likely to enter*
33 *treatment, remained in treatment significantly longer, and*
34 *engaged in significantly less drug use when they received swift*
35 *and sure sanctions and rewards, including the possibility of brief*
36 *periods of jail time during the course of treatment. Therefore,*
37 *sanctions including short periods of jail time for relapsing,*
38 *problematic, or recalcitrant offenders, on a showing of need after*
39 *consideration of important treatment and other factors, should be*

1 available, not as a substitute for treatment but as a tool to
2 motivate and hold offenders accountable.

3 (h) The UCLA evaluations speak to the need to verify
4 self-reported drug use by drug testing. Drug testing is widely
5 accepted by treatment providers as an integral component of
6 treatment. In addition, test results are needed to assist providers
7 in adjusting treatment plans. Therefore, courts shall require drug
8 testing as a condition of probation, commensurate with treatment
9 needs.

10 (i) It is the intent of the Legislature, therefore, to do all of the
11 following to further the purposes of the act:

12 (1) Maintain the General Fund transfer to the Substance
13 Abuse Treatment Trust Fund, conditioned on modifications to the
14 SACPA program that will improve outcomes and promote
15 accountability consistent with the act and to further the purposes
16 of the act.

17 (2) Provide for closer judicial monitoring through dedicated
18 calendars and close collaboration between the court, probation,
19 and treatment to improve offender outcomes.

20 (3) Provide treatment, including detoxification and residential
21 services that are tailored to the individual needs of offenders,
22 and of sufficient duration to improve completion rates. In
23 addition, permit judicial discretion to provide offenders
24 additional opportunities following a third drug-related violation
25 of probation, and first non-drug-related violation of probation to
26 complete treatment, as well as, after a hearing, to remove
27 offenders from the program who pose a danger to the public and,
28 in addition, will not benefit from treatment.

29 (4) Provide brief jail sanctions to enhance accountability and
30 as a motivational tool to improve the number of defendants who
31 enter treatment, remain in treatment, and complete treatment and
32 probation consistent with the purposes of the act.

33 (5) Mandate drug testing as a treatment tool as well as a
34 method to assure accountability.

35 (6) It is also the intent of the Legislature to address additional
36 issues that need clarification, or were not adequately addressed
37 by the act, that need to be resolved to further the purposes of the
38 act, consistent with the act.

39 SEC. 2. Section 11999.6 of the Health and Safety Code is
40 amended to read:

~~11999.6. Distribution of Monies from Substance Abuse Treatment Trust Fund~~

~~Monies~~

Moneys deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing—(a) drug treatment programs under this act, and—(b) vocational training, family counseling, and literacy training under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act other than drug testing services of any kind. ~~Such monies~~ *Incarceration costs cannot be reimbursed from the fund. Those moneys* shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment. *In addition, funds from the Substance Abuse Treatment Trust Fund shall not be used to fund in any way the drug treatment courts established pursuant to Article 2 (commencing with Section 11970.1) or Article 3 (commencing with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5, including drug treatment or probation supervision associated with those drug treatment courts.*

SEC. 3. Section 11999.9 of the Health and Safety Code is amended to read:

~~11999.9. Annual Evaluation Process~~

(a) The department shall ~~annually~~ *conduct a study three two-year followup studies* to evaluate the effectiveness and

1 financial impact of the programs that are funded pursuant to the
2 requirements of this act. ~~The study, and submit those studies to~~
3 ~~the Legislature no later than January 1, 2009, January 1, 2011,~~
4 ~~and January 1, 2013, respectively. The evaluation studies shall~~
5 ~~include, but not be limited to, a study of the implementation~~
6 ~~process, a review of lower incarceration costs, reductions in~~
7 ~~crime, reduced prison and jail construction, reduced welfare~~
8 ~~costs, the adequacy of funds appropriated, and any other impacts~~
9 ~~or issues the department can identify. the following:~~

10 (1) *Criminal justice measures on rearrests, jail and prison*
11 *days averted, and crime trends.*

12 (2) *Treatment measures on completion rates and quality of life*
13 *indicators, such as alcohol and drug used, employment, health,*
14 *mental health, and family and social supports.*

15 (b) *In addition to studies to evaluate the effectiveness and*
16 *financial impact of the programs that are funded pursuant to the*
17 *requirements of this act, the department shall produce an annual*
18 *report detailing the number and characteristics of participants*
19 *served as a result of this act, and the related costs.*

20 SEC. 4. *Section 11999.10 of the Health and Safety Code is*
21 *amended to read:*

22 11999.10. ~~Outside Evaluation Process~~

23 The department shall allocate up to 0.5 percent of the fund's
24 ~~total monies~~ *moneys* each year ~~for a long-term study to be~~
25 ~~conducted by a public university in California aimed at~~
26 ~~evaluating the effectiveness and financial impact of the programs~~
27 ~~that are funded pursuant to the requirements of this act to fund~~
28 ~~the costs of the studies required in Section 11999.9 by a public or~~
29 ~~private university.~~

30 SEC. 5. *Section 11999.12 of the Health and Safety Code is*
31 *amended to read:*

32 11999.12. ~~Audit of Expenditures~~

33 The department shall ~~annually audit~~ *conduct periodic audits of*
34 *the expenditures made by any county that is funded, in whole or*
35 *in part, with funds provided by this act. Counties shall repay to*
36 *the department any funds that are not spent in accordance with*
37 *the requirements of this act. The department may require a*
38 *corrective action by the county in the place of repayment, as*
39 *determined by the department.*

40 SEC. 6. *Section 1210 of the Penal Code is amended to read:*

1 1210. Definitions

2 As used in Sections 1210.1 and 3063.1 of this code, and
3 Division 10.8 (commencing with Section 11999.4) of the Health
4 and Safety Code, *the following definitions apply:*

5 (a) The term “nonviolent drug possession offense” means the
6 unlawful personal use, possession for personal use, or
7 transportation for personal use of any controlled substance
8 identified in Section 11054, 11055, 11056, 11057 or 11058 of the
9 Health and Safety Code, or the offense of being under the
10 influence of a controlled substance in violation of Section 11550
11 of the Health and Safety Code. The term “nonviolent drug
12 possession offense” does not include the possession for sale,
13 production, or manufacturing of any controlled substance and
14 does not include violations of Section 4573.6 or 4573.8.

15 (b) The term “drug treatment program” or “drug treatment”
16 means a state licensed ~~and/or~~ *or* certified community drug
17 treatment program, which may include one or more of the
18 following: *drug education, outpatient treatment services,*
19 ~~half-way house treatment, narcotic replacement therapy, drug~~
20 ~~education or prevention courses and/or limited inpatient or~~
21 ~~residential drug treatment as needed to address special,~~
22 ~~detoxification or relapse situations or severe dependence~~
23 ~~services, and aftercare services.~~ The term “drug treatment
24 program” or “drug treatment” includes a drug treatment program
25 operated under the direction of the Veterans Health
26 Administration of the Department of Veterans Affairs or a
27 program specified in Section 8001; ~~such a~~ *That type of* program
28 shall be eligible to provide drug treatment services without
29 regard to the licensing or certification provisions required by this
30 subdivision. The term “drug treatment program” or “drug
31 treatment” does not include drug treatment programs offered in a
32 prison or jail facility.

33 (c) The term “successful completion of treatment” means that
34 a defendant who has had drug treatment imposed as a condition
35 of probation has completed the prescribed course of drug
36 treatment *as recommended by the treatment provider and*
37 *ordered by the court* and, as a result, there is reasonable cause to
38 believe that the defendant will not abuse controlled substances in
39 the future. *Completion of treatment shall not require cessation of*
40 *narcotic replacement therapy.*

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 7. Section 1210.1 of the Penal Code is amended to read:

~~1210.1. Possession of Controlled Substances; Probation; Exceptions~~

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. *The court shall impose appropriate drug testing as a condition of probation.* The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. *No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder. To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings.*

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) ~~does~~ *shall* not apply to ~~either~~ *any* of the following:

(1) Any defendant who previously has been convicted of one or more ~~serious or violent or serious~~ felonies ~~in violation of as defined in~~ subdivision (c) of Section 667.5 or ~~subdivision (c) of~~ Section 1192.7, *respectively*, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in ~~(A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.~~

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

~~(A) While using a firearm, while armed with a deadly weapon, with the intent to use the same as a deadly weapon, unlawfully possesses any amount of (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, nonliquid, plant substance, or hand-rolled cigarette, containing phenylelidine.~~

~~(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phenylelidine; or is under the influence of any controlled substance identified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code.~~

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who ~~(A)~~ has two separate convictions for nonviolent drug possession offenses, ~~(B)~~ has participated in two separate courses of drug treatment pursuant to subdivision (a), and ~~(C)~~ is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment; *as defined in subdivision (b) of Section 1210.* Notwithstanding any other provision of law, the trial court shall sentence ~~such defendants that~~ defendant to 30 days in jail.

(c) Any defendant who has previously been convicted of at least three non-drug-related felonies for which the defendant has

1 served three separate prison terms with in the meaning of
2 subdivision (b) of Section 667.5 shall be presumed eligible for
3 treatment under subdivision (a). The court may exclude such a
4 defendant from treatment under subdivision (a) where the court,
5 pursuant to the motion of the prosecutor or its own motion, finds
6 that the defendant poses a present danger to the safety of others
7 and would not benefit from a drug treatment program. The court
8 shall, on the record, state its findings, the reasons for those
9 findings.

10 (d) Within seven days of an order imposing probation under
11 subdivision (a), the probation department shall notify the drug
12 treatment provider designated to provide drug treatment under
13 subdivision (a). Within 30 days of receiving that notice, the
14 treatment provider shall prepare a treatment plan and forward it
15 to the probation department. ~~On a quarterly basis after the~~
16 ~~defendant begins the drug treatment program, the~~ for distribution
17 ~~to the court and counsel. The treatment provider shall prepare~~
18 ~~and forward a progress report on the individual probationer~~
19 provide to the probation department standardized treatment
20 progress reports, with minimum data elements as determined by
21 the department, including all drug testing results. At a minimum,
22 the reports shall be provided to the court every 90 days, or more
23 frequently, as the court directs.

24 (1) If at any point during the course of drug treatment the
25 treatment provider notifies the probation department *and the*
26 court that the defendant is unamenable to the drug treatment
27 being provided, but may be amenable to other drug treatments or
28 related programs, the probation department may move the court
29 to modify the terms of probation, *or on its own motion, the court*
30 *may modify the terms of probation after a hearing* to ensure that
31 the defendant receives the alternative drug treatment or program.

32 (2) If at any point during the course of drug treatment the
33 treatment provider notifies the probation department *and the*
34 court that the defendant is unamenable to the drug treatment
35 provided and all other forms of drug treatment programs pursuant
36 to subdivision (b) of Section 1210, the probation department may
37 move to revoke probation. At the revocation hearing, if it is
38 proved that the defendant is unamenable to all drug treatment
39 programs pursuant to subdivision (b) of Section 1210, the court
40 may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, ~~provided, however, that additional aftercare services as a condition of probation may be required for up to six months.~~ *unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under the Substance Abuse and Crime Prevention Act of 2000 shall not exceed 24 months.*

~~(d) Dismissal of charges upon successful completion of drug treatment~~

(e) (1) At any time after completion of drug treatment, ~~a defendant may petition the sentencing court for dismissal of the charges. If and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment.~~ Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record

1 pertaining to an arrest or conviction resulting in successful
2 completion of a drug treatment program under this section may
3 not, without the defendant's consent, be used in any way that
4 could result in the denial of any employment, benefit, license, or
5 certificate.

6 Regardless of his or her successful completion of drug
7 treatment, the arrest and conviction on which the probation was
8 based may be recorded by the Department of Justice and
9 disclosed in response to any peace officer application request or
10 any law enforcement inquiry. Dismissal of an information,
11 complaint, or indictment under this section does not relieve a
12 defendant of the obligation to disclose the arrest and conviction
13 in response to any direct question contained in any questionnaire
14 or application for public office, for a position as a peace officer
15 as defined in Section 830, for licensure by any state or local
16 agency, for contracting with the California State Lottery, or for
17 purposes of serving on a jury.

18 ~~(e) Violation of probation~~

19 (f) (1) If probation is revoked pursuant to the provisions of
20 this subdivision, the defendant may be incarcerated pursuant to
21 otherwise applicable law without regard to the provisions of this
22 section.

23 ~~(2) Non-drug-related probation violations~~

24 If a defendant receives probation under subdivision (a), and
25 violates that probation either by ~~being arrested for~~ committing an
26 offense that is not a nonviolent drug possession offense, or by
27 violating a non-drug-related condition of probation, and the state
28 moves to revoke probation, the court ~~shall conduct a hearing~~ may
29 *remand the defendant for a period not exceeding 30 days during*
30 *which time the court may receive input from treatment,*
31 *probation, the state, and the defendant, and the court may*
32 *conduct further hearings as it deems appropriate to determine*
33 *whether or not probation shall be revoked. The court may modify*
34 *or revoke probation if the alleged violation is proved. should be*
35 *reinstated under this section. If the court reinstates the defendant*
36 *on probation, the court may modify the treatment plan and any*
37 *other terms of probation, and continue the defendant in a*
38 *treatment program under the Substance Abuse and Crime*
39 *Prevention Act of 2000. If the court reinstates the defendant on*
40 *probation, the court may, after receiving input from the treatment*

1 *provider and probation, if available, intensify or alter the*
2 *treatment plan under subdivision (a), and impose sanctions,*
3 *including jail sanctions not exceeding 30 days, a tool to enhance*
4 *treatment compliance.*

5 ~~(3) Drug-related probation violations~~

6 (A) If a defendant receives probation under subdivision (a),
7 and violates that probation either by committing a nonviolent
8 drug possession offense, or a misdemeanor for simple possession
9 or use of drugs or drug paraphernalia, being present where drugs
10 are used, or failure to register as a drug offender, or any activity
11 similar to those listed in ~~paragraph (1)~~ of subdivision (d) of
12 Section 1210, or by violating a drug-related condition of
13 probation, and the state moves to revoke probation, the court
14 shall conduct a hearing to determine whether probation shall be
15 revoked. The trial court shall revoke probation if the alleged
16 probation violation is proved and the state proves by a
17 preponderance of the evidence that the defendant poses a danger
18 to the safety of others. If the court does not revoke probation, it
19 may intensify or alter the drug treatment plan *and in addition, if*
20 *the violation does not involve the recent use of drugs as a*
21 *circumstance of the violation, including, but not limited to,*
22 *violations relating to failure to appear at treatment or court,*
23 *noncompliance with treatment, and failure to report for drug*
24 *testing, the court may impose sanctions including jail sanctions*
25 *that may not exceed 48 hours of continuous custody as a tool to*
26 *enhance treatment compliance and impose other changes in the*
27 *terms and conditions of probation. The court shall consider,*
28 *among other factors, the seriousness of the violation, previous*
29 *treatment compliance, employment, education, vocational*
30 *training, medical conditions, medical treatment, including*
31 *narcotics replacement treatment, and including the opinion of the*
32 *defendant's licensed and treating physician if immediately*
33 *available and presented at the hearing, child support obligations,*
34 *and family responsibilities. The court shall consider additional*
35 *conditions of probation, which may include, but are not limited*
36 *to, community service and supervised work programs. If one of*
37 *the circumstances of the violation involves recent drug use, as*
38 *well as other circumstances of violation, and the circumstance of*
39 *recent drug use is demonstrated to the court by satisfactory*
40 *evidence and a finding made on the record, the court may, after*

1 *receiving input from treatment and probation, if available, direct*
2 *the defendant to enter a licensed detoxification or residential*
3 *treatment facility, and if there is no bed immediately available in*
4 *such a facility, the court may order that the defendant be*
5 *confined in a county jail for detoxification purposes only, if the*
6 *jail offers detoxification services, for a period not to exceed 10*
7 *days. The detoxification services must provide narcotic*
8 *replacement therapy for those defendants presently actually*
9 *receiving narcotic replacement therapy.*

10 (B) If a defendant receives probation under subdivision (a),
11 and for the second time violates that probation either by
12 committing a nonviolent drug possession offense, or a
13 misdemeanor for simple possession or use of drugs or drug
14 paraphernalia, being present where drugs are used, or failure to
15 register as a drug offender, or any activity similar to those listed
16 ~~in paragraph (1) of subdivision (d) of Section 1210, or by~~
17 violating a drug-related condition of probation, and the state
18 ~~moves for a second time to revoke probation,~~ the court shall
19 conduct a hearing to determine whether probation shall be
20 revoked. The trial court shall revoke probation if the alleged
21 probation violation is proved and the state proves by a
22 preponderance of the evidence either that the defendant poses a
23 danger to the safety of others or is unamenable to drug treatment.
24 In determining whether a defendant is unamenable to drug
25 treatment, the court may consider, to the extent relevant, whether
26 the defendant (i) has committed a serious violation of rules at the
27 drug treatment program, (ii) has repeatedly committed violations
28 of program rules that inhibit the defendant's ability to function in
29 the program, or (iii) has continually refused to participate in the
30 program or asked to be removed from the program. If the court
31 does not revoke probation, it may intensify or alter the drug
32 treatment plan, *and may, in addition, if the violation does not*
33 *involve the recent use of drugs as a circumstance of the violation,*
34 *including, but not limited to, violations relating to failure to*
35 *appear at treatment or court, noncompliance with treatment, and*
36 *failure to report for drug testing, impose sanctions including jail*
37 *sanctions that may not exceed 120 hours of continuous custody*
38 *as a tool to enhance treatment compliance and impose other*
39 *changes in the terms and conditions of probation. The court shall*
40 *consider, among other factors, the seriousness of the violation,*

1 *previous treatment compliance, employment, education,*
2 *vocational training, medical conditions, medical treatment,*
3 *including narcotics replacement treatment, and including the*
4 *opinion of the defendant's licensed and treating physician if*
5 *immediately available and presented at the hearing, child*
6 *support obligations, and family responsibilities. The court shall*
7 *consider additional conditions of probation, which may include,*
8 *but are not limited to, community service and supervised work*
9 *programs. If one of the circumstances of the violation involves*
10 *recent drug use, as well as other circumstances of violation, and*
11 *the circumstance of recent drug use is demonstrated to the court*
12 *by satisfactory evidence and a finding made on the record, the*
13 *court may, after receiving input from treatment and probation, if*
14 *available, direct the defendant to enter a licensed detoxification*
15 *or residential treatment facility, and if there is no bed*
16 *immediately available in the facility, the court may order that the*
17 *defendant be confined in a county jail for detoxification purposes*
18 *only, if the jail offers detoxification services, for a period not to*
19 *exceed 10 days. Detoxification services must provide narcotic*
20 *replacement therapy for those defendants presently actually*
21 *receiving narcotic replacement therapy.*

22 (C) If a defendant receives probation under subdivision (a),
23 and for the third *or subsequent* time violates that probation either
24 by committing a nonviolent drug possession offense, or by
25 violating a drug-related condition of probation, and the state
26 moves for a third *or subsequent* time to revoke probation, the
27 court shall conduct a hearing to determine whether probation
28 shall be revoked. If the alleged probation violation is proved, the
29 defendant is not eligible for continued probation under
30 subdivision (a) *unless the court determines that the defendant is*
31 *not a danger to the community and would benefit from further*
32 *treatment under subdivision (a). The court may then either*
33 *intensify or alter the treatment plan under subdivision (a) or*
34 *transfer the defendant to a highly structured drug court. If the*
35 *court continues the defendant in treatment under subdivision (a),*
36 *or drug court, the court may impose appropriate sanctions*
37 *including jail sanctions as the court deems appropriate.*

38 (D) If a defendant on probation at the effective date of this act
39 for a nonviolent drug possession offense violates that probation
40 either by ~~being arrested for~~ committing a nonviolent drug

1 possession offense, or a misdemeanor for simple possession or
2 use of drugs or drug paraphernalia, being present where drugs are
3 used, or failure to register as a drug offender, or any activity
4 similar to those listed in ~~paragraph (1) of subdivision (d) of~~
5 Section 1210, or by violating a drug-related condition of
6 probation, and the state moves to revoke probation, the court
7 shall conduct a hearing to determine whether probation shall be
8 revoked. The trial court shall revoke probation if the alleged
9 probation violation is proved and the state proves by a
10 preponderance of the evidence that the defendant poses a danger
11 to the safety of others. If the court does not revoke probation, it
12 may modify ~~probation and impose as an additional condition~~
13 ~~participation in a drug treatment program or alter the treatment~~
14 ~~plan, and in addition, if the violation does not involve the recent~~
15 ~~use of drugs as a circumstance of the violation, including, but not~~
16 ~~limited to, violations relating to failure to appear at treatment or~~
17 ~~court, noncompliance with treatment, and failure to report for~~
18 ~~drug testing, the court may impose sanctions including jail~~
19 ~~sanctions that may not exceed 48 hours of continuous custody as~~
20 ~~a tool to enhance treatment compliance and impose other~~
21 ~~changes in the terms and conditions of probation. The court shall~~
22 ~~consider, among other factors, the seriousness of the violation,~~
23 ~~previous treatment compliance, employment, education,~~
24 ~~vocational training, medical conditions, medical treatment,~~
25 ~~including narcotics replacement treatment, and including the~~
26 ~~opinion of the defendant's licensed and treating physician if~~
27 ~~immediately available and presented at the hearing, child~~
28 ~~support obligations, and family responsibilities. The court shall~~
29 ~~consider additional conditions of probation, which may include,~~
30 ~~but are not limited to, community service and supervised work~~
31 ~~programs. If one of the circumstances of the violation involves~~
32 ~~recent drug use, as well as other circumstances of violation, and~~
33 ~~the circumstance of recent drug use is demonstrated to the court~~
34 ~~by satisfactory evidence and a finding made on the record, the~~
35 ~~court may, after receiving input from treatment and probation, if~~
36 ~~available, direct the defendant to enter a licensed detoxification~~
37 ~~or residential treatment facility, and if there is no bed~~
38 ~~immediately available in such a facility, the court may order that~~
39 ~~the defendant be confined in a county jail for detoxification~~
40 ~~purposes only, if the jail offers detoxification services, for a~~

1 *period not to exceed 10 days. The detoxification services must*
2 *provide narcotic replacement therapy for those defendants*
3 *presently actually receiving narcotic replacement therapy.*

4 (E) If a defendant on probation at the effective date of this act
5 for a nonviolent drug possession offense violates that probation a
6 second time either by ~~being arrested for committing~~ a nonviolent
7 drug possession offense, or a misdemeanor for simple possession
8 or use of drugs or drug paraphernalia, being present where drugs
9 are used, or failure to register as a drug offender, or any activity
10 similar to those listed in ~~paragraph (1) of~~ subdivision (d) of
11 Section 1210, or by violating a drug-related condition of
12 probation, and the state moves for a second time to revoke
13 probation, the court shall conduct a hearing to determine whether
14 probation shall be revoked. The trial court shall revoke probation
15 if the alleged probation violation is proved and the state proves
16 by a preponderance of the evidence either that the defendant
17 poses a danger to the safety of others or that the defendant is
18 unamenable to drug treatment. If the court does not revoke
19 probation, it may ~~modify probation and impose as an additional~~
20 ~~condition participation in a drug treatment program or alter the~~
21 *treatment plan, and in addition, if the violation does not involve*
22 *the recent use of drugs as a circumstance of the violation,*
23 *including, but not limited to, violations relating to failure to*
24 *appear at treatment or court, noncompliance with treatment, and*
25 *failure to report for drug testing, the court may impose sanctions*
26 *including jail sanctions that may not exceed 120 hours of*
27 *continuous custody as a tool to enhance treatment compliance*
28 *and impose other changes in the terms and conditions of*
29 *probation. The court shall consider, among other factors, the*
30 *seriousness of the violation, previous treatment compliance,*
31 *employment, education, vocational training, medical conditions,*
32 *medical treatment including narcotics replacement treatment,*
33 *and including the opinion of the defendant's licensed and*
34 *treating physician if immediately available and presented at the*
35 *hearing, child support obligations, and family responsibilities.*
36 *The court shall consider additional conditions of probation,*
37 *which may include, but are not limited to, community service and*
38 *supervised work programs. If one of the circumstances of the*
39 *violation involves recent drug use, as well as other*
40 *circumstances of violation, and the circumstance of recent drug*

1 use is demonstrated to the court by satisfactory evidence and a
2 finding made on the record, the court may, after receiving input
3 from treatment and probation, if available, direct the defendant
4 to enter a licensed detoxification or residential treatment facility,
5 and if there is no bed immediately available in such a facility, the
6 court may order that the defendant be confined in a county jail
7 for detoxification purposes only, if the jail offers detoxification
8 services, for a period not to exceed 10 days. The detoxification
9 services must provide narcotic replacement therapy for those
10 defendants presently actually receiving narcotic replacement
11 therapy.

12 (F) If a defendant on probation at the effective date of this act
13 for a nonviolent drug offense violates that probation a third or
14 subsequent time either by ~~being arrested for committing~~ a
15 nonviolent drug possession offense, or by violating a drug-related
16 condition of probation, and the state moves for a third or
17 subsequent time to revoke probation, the court shall conduct a
18 hearing to determine whether probation shall be revoked. If the
19 alleged probation violation is proved, the defendant is not
20 eligible for continued probation under subdivision (a), unless the
21 court determines that the defendant is not a danger to the
22 community and would benefit from further treatment under
23 subdivision (a). The court may then either intensify or alter the
24 treatment plan under subdivision (a) or transfer the defendant to
25 a highly structured drug court. If the court continues the
26 defendant in treatment under subdivision (a), or drug court, the
27 court may impose appropriate sanctions including jail sanctions.

28 (f) The term “drug-related condition of probation” shall
29 include a probationer’s specific drug treatment regimen,
30 employment, vocational training, educational programs,
31 psychological counseling, and family counseling.

32 SEC. 8. Section 3063.1 of the Penal Code is amended to
33 read:

34 3063.1. ~~Possession of Controlled Substances; Parole;~~
35 ~~Exceptions~~

36 (a) Notwithstanding any other provision of law, and except as
37 provided in subdivision (d), parole may not be suspended or
38 revoked for commission of a nonviolent drug possession offense
39 or for violating any drug-related condition of parole.

1 As an additional condition of parole for all such offenses or
2 violations, the Parole Authority shall require participation in and
3 completion of an appropriate drug treatment program. Vocational
4 training, family counseling and literacy training may be imposed
5 as additional parole conditions.

6 The Parole Authority may require any person on parole who
7 commits a nonviolent drug possession offense or violates any
8 drug-related condition of parole, and who is reasonably able to
9 do so, to contribute to the cost of his or her own placement in a
10 drug treatment program.

11 (b) Subdivision (a) does not apply to:

12 (1) Any parolee who has been convicted of one or more
13 serious or violent felonies in violation of subdivision (c) of
14 Section 667.5 or Section 1192.7.

15 (2) Any parolee who, while on parole, commits one or more
16 nonviolent drug possession offenses and is found to have
17 concurrently committed a misdemeanor not related to the use of
18 drugs or any felony.

19 (3) Any parolee who refuses drug treatment as a condition of
20 parole.

21 (c) Within seven days of a finding that the parolee has either
22 committed a nonviolent drug possession offense or violated any
23 drug-related condition of parole, the ~~Parole Authority~~
24 *Department of Corrections and Rehabilitation, Division of Adult*
25 *Parole Operations* shall notify the treatment provider designated
26 to provide drug treatment under subdivision (a). Within 30 days
27 thereafter the treatment provider shall prepare an individualized
28 drug treatment plan and forward it to the Parole Authority and to
29 the California Department of Corrections ~~Parole and~~
30 *Rehabilitation, Division of Adult Parole Operations* agent
31 responsible for supervising the parolee. On a quarterly basis after
32 the parolee begins drug treatment, the treatment provider shall
33 prepare and forward a progress report on the individual parolee
34 to these entities and individuals.

35 (1) If at any point during the course of drug treatment the
36 treatment provider notifies the ~~Parole Authority~~ *Department of*
37 *Corrections and Rehabilitation, Division of Adult Parole*
38 *Operations* that the parolee is unamenable to the drug treatment
39 provided, but amenable to other drug treatments or related
40 programs, the ~~Parole Authority~~ *Department of Corrections and*

1 *Rehabilitation, Division of Adult Parole Operations* may act to
2 modify the terms of parole to ensure that the parolee receives the
3 alternative drug treatment or program.

4 (2) If at any point during the course of drug treatment the
5 treatment provider notifies the ~~Parole Authority~~ *Department of*
6 *Corrections and Rehabilitation, Division of Adult Parole*
7 *Operations* that the parolee is unamenable to the drug treatment
8 provided and all other forms of drug treatment provided pursuant
9 to subdivision (b) of Section 1210 and the amenability factors
10 described in subparagraph (B) of paragraph (3) of subdivision (e)
11 of Section 1210.1, the ~~Parole Authority~~ *Department of*
12 *Corrections and Rehabilitation, Division of Adult Parole*
13 *Operations* may act to revoke parole. At the revocation hearing,
14 parole may be revoked if it is proved that the parolee is
15 unamenable to all drug treatment.

16 (3) Drug treatment services provided by subdivision (a) as a
17 required condition of parole may not exceed 12 months,
18 ~~provided, however, that additional aftercare services as a~~
19 ~~condition of parole may be required for up to six unless the~~
20 *Department of Corrections and Rehabilitation, Division of Adult*
21 *Parole Operations* makes a finding supported by the record that
22 *the continuation of treatment services beyond 12 months is*
23 *necessary for drug treatment to be successful. If that finding is*
24 *made, the Department of Corrections and Rehabilitation,*
25 *Division of Adult Parole Operations* may order up to two
26 *six-month extensions of treatment services. The provision of*
27 *treatment services under this act shall not exceed 24 months.*

28 ~~(d) Violation of parole~~

29 ~~(1)~~

30 (d) (1) If parole is revoked pursuant to the provisions of this
31 subdivision, the defendant may be incarcerated pursuant to
32 otherwise applicable law without regard to the provisions of this
33 section. Parole shall be revoked if the parole violation is proved
34 and a preponderance of the evidence establishes that the parolee
35 poses a danger to the safety of others.

36 ~~(2) Non-drug-related parole violations~~

37 (2) If a parolee receives drug treatment under subdivision (a),
38 and during the course of drug treatment violates parole either by
39 committing an offense other than a nonviolent drug possession
40 offense, or by violating a non-drug-related condition of parole,

1 and the ~~Parole Authority~~ *Department of Corrections and*
2 *Rehabilitation, Division of Adult Parole Operations* acts to
3 revoke parole, a hearing shall be conducted to determine whether
4 parole shall be revoked.

5 Parole may be modified or revoked if the parole violation is
6 proved.

7 ~~(3) Drug-related parole violations~~

8 ~~(A)~~

9 (3) (A) If a parolee receives drug treatment under subdivision
10 (a), and during the course of drug treatment violates parole either
11 by committing a nonviolent drug possession offense, or a
12 misdemeanor for simple possession or use of drugs or drug
13 paraphernalia, being present where drugs are used, or failure to
14 register as a drug offender, or any activity similar to those listed
15 in ~~paragraph (1)~~ of subdivision (d) of Section 1210, or by
16 violating a drug-related condition of parole, and the ~~Parole~~
17 ~~Authority~~ *Department of Corrections and Rehabilitation,*
18 *Division of Adult Parole Operations* acts to revoke parole, a
19 hearing shall be conducted to determine whether parole shall be
20 revoked. Parole shall be revoked if the parole violation is proved
21 and a preponderance of the evidence establishes that the parolee
22 poses a danger to the safety of others. If parole is not revoked,
23 the conditions of parole may be intensified to achieve the goals
24 of drug treatment.

25 (B) If a parolee receives drug treatment under subdivision (a),
26 and during the course of drug treatment for the second time
27 violates that parole either by committing a nonviolent drug
28 possession offense, or by violating a drug-related condition of
29 parole, and the ~~Parole Authority~~ *Department of Corrections and*
30 *Rehabilitation, Division of Adult Parole Operations* acts for a
31 second time to revoke parole, a hearing shall be conducted to
32 determine whether parole shall be revoked. If the alleged parole
33 violation is proved, the parolee is not eligible for continued
34 parole under any provision of this section and may be
35 reincarcerated.

36 (C) If a parolee already on parole at the effective date of this
37 act violates that parole either by committing a nonviolent drug
38 possession offense, or a misdemeanor for simple possession or
39 use of drugs or drug paraphernalia, being present where drugs are
40 used, or failure to register as a drug offender, or any activity

1 similar to those listed in paragraph (1) of subdivision (d) of
2 Section 1210, or by violating a drug-related condition of parole,
3 and the ~~Parole Authority~~ *Department of Corrections and*
4 *Rehabilitation, Division of Adult Parole Operations* acts to
5 revoke parole, a hearing shall be conducted to determine whether
6 parole shall be revoked. Parole shall be revoked if the parole
7 violation is proved and a preponderance of the evidence
8 establishes that the parolee poses a danger to the safety of others.
9 If parole is not revoked, the conditions of parole may be
10 modified to include participation in a drug treatment program as
11 provided in subdivision (a). This paragraph does not apply to any
12 parolee who at the effective date of this act has been convicted of
13 one or more serious or violent felonies in violation of subdivision
14 (c) of Section 667.5 or Section 1192.7.

15 (D) If a parolee already on parole at the effective date of this
16 act violates that parole for the second time either by committing
17 a nonviolent drug possession offense, or by violating a
18 drug-related condition of parole, and the ~~Parole Authority~~ *parole*
19 *authority* acts for a second time to revoke parole, a hearing shall
20 be conducted to determine whether parole shall be revoked. If the
21 alleged parole violation is proved, the parolee ~~is not eligible for~~
22 ~~continued parole under any provision of this section and~~ may be
23 reincarcerated *or the conditions of parole may be intensified to*
24 *achieve the goals of drug treatment.*

25 (e)

26 (d) The term “drug-related condition of parole” shall include a
27 parolee’s specific drug treatment regimen, and, if ordered by the
28 ~~parole authority~~ *Department of Corrections and Rehabilitation,*
29 *Division of Adult Parole Operations* pursuant to this section,
30 employment, vocational training, educational programs,
31 psychological counseling, and family counseling.

32 *SEC. 9. The provisions of this bill shall be applied*
33 *prospectively. If any provision of this bill is found to be invalid,*
34 *the entire legislative measure shall be submitted to the voters at*
35 *the next statewide election.*

36 *SEC. 10. The Legislature finds and declares that the*
37 *provisions of this act are consistent with the purposes of the*
38 *Substance Abuse and Crime Prevention Act of 2000.*

39 *SEC. 11. No reimbursement is required by this act pursuant*
40 *to Section 6 of Article XIII B of the California Constitution*

1 *because the only costs that may be incurred by a local agency or*
2 *school district will be incurred because this act creates a new*
3 *crime or infraction, eliminates a crime or infraction, or changes*
4 *the penalty for a crime or infraction, within the meaning of*
5 *Section 17556 of the Government Code, or changes the definition*
6 *of a crime within the meaning of Section 6 of Article XIII B of the*
7 *California Constitution.*

8 *SEC. 12. This act is an urgency statute necessary for the*
9 *immediate preservation of the public peace, health, or safety*
10 *within the meaning of Article IV of the Constitution and shall go*
11 *into immediate effect. The facts constituting the necessity are:*

12 *In order to ensure that the essential services provided under*
13 *the Substance Abuse and Crime Prevention Act of 2000 continue*
14 *to be provided without interruption, it is necessary that this bill*
15 *go into immediate effect.*

16 ~~SECTION 1. It is the intent of the Legislature to enact~~
17 ~~statutory changes relating to the Budget Act of 2006.~~